

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**THIRD AMENDMENT TO CASE
MANAGEMENT ORDER NO. 5:
COMMON BENEFIT ORDER—
TIMEKEEPING AND EXPENSES
PROTOCOL**

This Document Relates to:

ALL ACTIONS

This Order further amends Case Management Order No. 5 (Dkt. No. 352). In combination with Amended CMO-5 and Second Amended CMO-5¹ (collectively, “the governing orders”), this order shall govern common benefit timekeeping and expenses protocol for all the cases in this MDL.

This Order makes two modifications to the governing orders. First, to allow for greater clarity and precision in the recording Common Benefit tasks, the Court adopts the additional task codes set forth in the revised timekeeping forms attached as **Exhibit 1**. In general, these additional task codes should be applied prospectively. However, the Court expects that submitting counsel will collaborate with Lead Counsel in applying certain codes (*e.g.* 4.b, 11.a., 12.c.)—designed to bolster Lead Counsel’s diversity reporting—retroactively.

Second, the Court amends CMO-5 to include the following instructions:

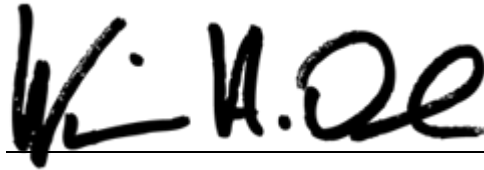
¹ Dkt. Nos. 381 and 1202, respectively.

1 To allow the Court to evaluate the diversity of the PSC and its major contributors, all
2 Common Benefit attorney timekeepers shall provide Lead Counsel with self-identification
3 metrics responsive to each category in the survey, attached as **Exhibit 2**. While responses to the
4 survey are required from each timekeeper, each category shall include an option for declining to
5 provide the information.

6 Lead Counsel shall compile this information and provide the Court with a quarterly
7 diversity report (alongside the time and expense report) that combines this diversity data with the
8 recorded Common Benefit tasks performed by each timekeeper. That quarterly report will
9 summarize—in a top-line and accessible manner—the roles and relative contributions of each
10 self-identified group. Each report will also include Lead Counsel’s summary of the results (both
11 quantitative and qualitative) of its’ diversity efforts to date and Lead Counsel’s actionable goals
12 for maximizing inclusion on a go forward basis.

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14 **IT IS SO ORDERED.**

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17 **DATED:** August 27, 2021

A handwritten signature in black ink, appearing to read "W. H. Orrick", written over a horizontal line.

18 Hon. William H. Orrick
19 United States District Court Judge
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Exhibit 1

Firm Name: _____

Date: _____

Categories: 1. Investigation/Factual Research 2. Attorney Meetings/Strategy 3. Leadership Case Management Duties (Co-Leads/PSC Only) 3.a. Case Management (Reports/Filings) 3.b. Case Management (Administration) 4.a. Court Appearances (Preparation for Argument/Presentation) 4.b. Court Appearances (Argument/Presentation) 4.c. Court Appearances (Attendance at Direction of Court/Leadership) 5. Pleadings (Complaint/Answer) 6.a. Discovery (Written Discovery – Propounding) 6.b. Discovery (Dispute – Analysis/Strategy) 6.c. Discovery (Dispute – Negotiation) 6.d. Discovery (Dispute – Lead Negotiation) 6.e. Discovery (Third-Party) 6.f. Discovery (Third-Party – Lead (Negotiation/Compliance)) 7. Discovery (Plaintiff Discovery - Responsive) 8. Document Review 9. Legal Research/Memoranda 10. Scientific Research 11.a. Motions/Briefs (Lead Author) 11.b. Motions/Briefs 12.a. Fact Depositions (Notice/Scheduling) 12.b. Fact Depositions (Preparation) 12.c. Fact Depositions (Questioning) 12.d. Fact Depositions (Defending) 12.e. Fact Depositions (Attending at the Direction of Leadership) 13. Class Certification/Notice 14.a. Experts/Consultants (Administrative) 14.b. Experts/Consultants (Lead Deposition Preparation) 14.c. Experts/Consultants (Deposition Preparation) 14.d. Experts/Consultants (Defending Deposition) 14.e. Experts/Consultants (Taking Deposition) 14.f. Experts/Consultants (Attending Deposition at the Direction of Leadership) 14.g. Experts/Consultants (Preparation of Reports) 15.a. Settlement/Mediation 15.b. Settlement Administration 16. Bellwether Selection 17. Trial Preparation (Prior to Pretrial Conference) 18. Trial 18.a. Bellwether Trial (Lead Counsel) 18.b. Bellwether Trial (Oral Argument) 18.c. Bellwether Trial (Attend at the Direction of Lead Counsel) 18.d. Bellwether Trial (Presentation of Evidence/Cross-Examination) 18.e. Bellwether Trial (Jury Selection) 18.f. Bellwether Trial (Administrative) 18.g. Bellwether Trial (Lead Negotiations) 18.h. Bellwether Trial (Witness Preparation) 19. Appeal 20. Client Communications 21. Miscellaneous 22.a. Internal Presentation - Strategy/Evidence/Analysis (Lead – Presentation) 22.b. Internal Presentation - Strategy/Evidence/Analysis (Preparation)

[illegible]

[illegible]

Exhibit 2

Diversity Survey

RACE/ETHNICITY (Please check (✓) one only)		
<input type="checkbox"/>	American Indian or Alaska Native (Not Hispanic or Latino)	A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
<input type="checkbox"/>	Asian (Not Hispanic or Latino)	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
<input type="checkbox"/>	Black or African American (Not Hispanic or Latino)	A person having origins in any of the black racial groups of Africa.
<input type="checkbox"/>	Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
<input type="checkbox"/>	Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)	A person having origins in any of the original peoples of Hawaii, Guan, Samoa, or other Pacific Islands.
<input type="checkbox"/>	White (Not Hispanic or Latino)	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
<input type="checkbox"/>	Two or More Races (Not Hispanic or Latino)	All persons who identify with more than one of the above categories.
<input type="checkbox"/>	I do not wish to self-identify	
GENDER/SEX		
<input type="checkbox"/>	Male	
<input type="checkbox"/>	Female	
<input type="checkbox"/>	Non-Binary	
<input type="checkbox"/>	I do not wish to self-identify	
LGBTQIA		
<input type="checkbox"/>	Yes	
<input type="checkbox"/>	No	
<input type="checkbox"/>	I do not wish to self-identify	
DISABILITY STATUS (A person is disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities)		
<input type="checkbox"/>	Yes	
<input type="checkbox"/>	No	
<input type="checkbox"/>	I do not wish to self-identify	
YEARS IN PRACTICE		
<input type="checkbox"/>	1-3	
<input type="checkbox"/>	4-6	
<input type="checkbox"/>	7-9	
<input type="checkbox"/>	10-15	
<input type="checkbox"/>	16-20	
<input type="checkbox"/>	20+	
<input type="checkbox"/>	I do not wish to disclose.	